IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE; TEACH ONE OF AMERICA, INC.,	)	
PLAINTIFFS,	)	
v.	)	**CIVIL ACTION NO.: 3:06-cv-224-WKW**
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
DEFENDANT.	)	

DEFENDANT SHERIFF WARREN'S MOTION TO DISMISS FIRST AMENDED COMPLAINT

COMES NOW, Defendant Sheriff David Warren ("Sheriff Warren"), who has been sued in his official capacity as Sheriff of Macon County, Alabama, and respectfully moves this Court to dismiss all claims against him in Plaintiffs' First Amended Complaint for Injunctive Relief and Declaratory Judgment ("First Amended Complaint") for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted pursuant to *Fed. R. Civ. P.* 12(b)(6). Sheriff Warren also moves to dismiss Macon County Investments, Inc. ("MCII") for lack of standing. In support of this motion, Sheriff Warren states the following:

1. This Court entered an Order on June 26, 2006 which dismissed MCII from this case but gave the Plaintiffs leave to amend the complaint to "properly identify the status of Macon County Investments, Inc. for purposes of standing." (Order dated June 26, 2006, at pg. 9)

2. Plaintiffs Reach One, Teach One ("Reach One") and MCII filed their filed their Amended Complaint on June 28, 2006 which substantially repeats all of the allegations contained in the original Complaint. Plaintiffs added three paragraphs which ostensibly seek to address MCII's standing. However, the new allegations raised in the Amended Complaint do not and cannot establish standing on behalf of MCII.

3. In paragraph 15 of their Amended Complaint, Plaintiffs allege that, "Reach One, Teach One and MCII filed a joint application for a Class B bingo license in Macon County." This allegation is inaccurate. Exhibit 4 to Plaintiffs' First Amended Complaint clearly shows that Reach One is the only one of the two Plaintiffs that submitted an application for a Class B bingo license. The Application is completed in the name of Reach One. The application lists the name and address of Reach One's Executive Director, certifies that Reach One is a tax-exempt organization, and provides Reach One's tax identification number. MCII's name, officers, tax status, and tax identification number are not listed on first page of the application which identifies the nonprofit organization applying for the license[1].

4. Moreover, Plaintiffs admit in paragraph 2 of their original Complaint and the First Amended Complaint that MCII is a "for-profit organization incorporated under the laws of the State of Alabama and doing business in Macon County as a real estate development company." (First Amended Comp. at ¶ 2.) Based upon its status as a for-profit business, MCII is not eligible to apply for or be issued a Class B bingo license.

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[1]Information about MCII and its officers and directors is included elsewhere in the application packet, but only to the extent that Reach One represents that it has contracted with MCII to operate bingo games on Reach One's behalf.

5. Amendment No. 744 authorizes the licensing of a nonprofit organization for the conduct of bingo. Specifically, Amendment No. 744 provides: “The operation of bingo games for prizes or money by nonprofit organizations for charitable, educational, or other lawful purposes shall be legal in Macon County.”

6. Pursuant to Amendment No. 744, Sheriff Warren promulgated The Rules and Regulations for the Conduct of Bingo in Macon County, Alabama (2003 Rules). Section 3 of the 2003 Rules provides that: “No nonprofit organization, as defined herein, shall be allowed to operate a bingo game unless the Sheriff first issues a license to said organization authorizing it to do so.” A “nonprofit organization” is defined in Section 1(d) as: “a bona fide organization for charitable, educational, or other lawful purposes which operates without profit to its members and/or which has been classified by the Internal Revenue Service as a tax exempt organization.”

7. Amendment No. 744 and the Macon County Bingo Rules provide for the licensing of a nonprofit organization for the conduct of bingo. While Amendment No. 744 permits a nonprofit organization to contract with another entity to operate bingo games at a facility, it does not permit or authorize Class B licensing for a for-profit organization. Only Plaintiff Reach One applied and only Reach One could possibly be eligible to obtain a Class B bingo license (assuming that Plaintiff Reach One met the qualifications).

8. Therefore, MCII did not apply for a Class B bingo license and does not have standing to challenge the grant or denial of Plaintiff Reach One’s application for a Class B bingo license.

9. The remaining claims asserted by Plaintiffs in the First Amended Complaint are due to be dismissed in their entirety on the following grounds, including without

limitation: (1) Plaintiffs' claim is not yet ripe; (2) the case is moot: and, (3) Plaintiffs' First Amended Complaint fails to state a claim upon which relief can be granted.

10. Finally, in support of this Motion to Dismiss Plaintiffs' First Amended Complaint, Sheriff Warren adopts and incorporates by reference, as if set forth fully herein, all of the grounds and authority presented in his original Motion to Dismiss and Brief in Support of Motion to Dismiss filed on April 3, 2006.

WHEREFORE, the premises considered, Defendant Sheriff Warren moves this Honorable Court to dismiss the First Amended Complaint in its entirety.

Respectfully submitted,

s/Fred D. Gray, Jr.
One of the Attorneys for Defendant,
David Warren, Sheriff of Macon County,
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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kenneth L. Thomas, Esq.
Ramadanah M. Salaam, Esq.
Gary A. Grasso, Esq.
Adam R. Bowers, Esq.
John M. Bolton, III, Esq.
Charlanna Spencer, Esq.

And I certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None.

s/Fred D. Gray, Jr.
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